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KENNETH JOHNSON

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

KENNETH JOHNSON

Defendant.

Criminal case No. 20-CR-238-JLT-SKO

**REPLY ON APPEAL FROM
MAGISTRATE ORDER REGARDING
MOTIONS [DOC. 1028]**

Date: June 24, 2024
Time: 10:00 a.m.
Place: Hon. Jennifer L. Thurston,
Courtroom 4

Defendant Mr. Kenneth Johnson, by counsel, The Law Office of Ryan J. Villa, by Ryan J. Villa, and Andrea Lee Luem, submits this Reply to the United States' Opposition [Doc. 1059]. Mr. Johnson requests the Court conduct a hearing and permit oral argument on this matter at previously noticed date and time, June 24, 2024 and 10:00 a.m.

ARGUMENT

The government's Opposition fails to acknowledge the arguments in Mr. Johnson's Appeal, that Judge Oberto relied on the wrong legal standard in denying the Motion. As Mr. Johnson argues in this appeal, Judge Oberto denied the Motion on the grounds that a court can

1 only grant relief regarding conditions of confinement in a criminal case if the conditions interfere
2 with counsel's ability to confidentially communicate with a defendant. However, Mr. Johnson did
3 not seek relief from the conditions of confinement on these grounds, but rather, requested the Court
4 return him to state custody pursuant to the writ ad prosequendum. Indeed, Mr. Johnson is not
5 requesting this Court, sitting in criminal jurisdiction, address the conditions at all. He is not asking
6 this Court to order Fresno County Jail (FCJ) to do anything. Instead, he asks the Court to return
7 him to state custody so he will not be subject to the ongoing unconstitutional conditions at FCJ
8 which not only violate his rights, but are impeding his ability to prepare for trial.
9

10 The Opposition makes no argument and cites to no authority that would suggest the Court
11 does not have the power to return him to state custody prior to trial in this matter. Practically
12 speaking, the United States Marshal Service (USMS) has to transport Mr. Johnson to court for
13 hearings. It can do this from state custody. To be sure, for trial, Mr. Johnson may need to remain
14 in FCJ since he will need to appear in Court daily, but this is not necessary for pretrial matters.
15 Further, if he is returned to state custody he will not be held in solitary confinement, his numerous
16 medical needs will be addressed, and counsel will be able to arrange visitation free from the
17 conditions that currently exist for visitation. All of these conditions create significant impediments
18 to Mr. Johnson's ability to consult with counsel and prepare for trial.
19

20 As of this filing, Mr. Johnson is still held in solitary confinement and only is released from
21 his tiny cell for less than an hour per day. This is simply torture and dramatically impacts his
22 mental health. As of this filing, Mr. Johnson still has not seen a specialist for his hernias, has not
23 obtained his orthopedic shoes, and has not received proper dental care. Due to Mr. Johnson's
24 mental and physical health, rather than preparing for trial, Mr. Johnson deals with pain, discomfort,
25
26
27

1 anxiety and stress. This changes counsel's job from conferring regarding the evidence, the defense
2 investigation and preparing for trial, to addressing Mr. Johnson's lack of care by the jail

3 **CONCLUSION**

4 Mr. Johnson specifically did not request that Judge Oberto issue any orders to the FCJ
5 concerning conditions of release in requesting to be returned to CDCR. Instead, he asked the Court
6 to grant relief pursuant to the writ ad prosequendum. Judge Oberto erred in ruling Mr. Johnson
7 could not obtain relief based on case law limiting the criminal court's power over conditions of
8 confinement, rather than addressing Mr. Johnson's argument. Accordingly, this Court should
9 overrule Judge Oberto and order Mr. Johnson be returned to CDCR custody pending his federal
10 trial. Mr. Johnson requests a hearing and oral argument on this matter.
11

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13 Respectfully submitted,

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26 **CERTIFICATE OF SERVICE**

27 I hereby certify that on this 28th day of May 2024, I served a true and correct copy of the
foregoing via ECF to:

All counsel of record

/s/ Ryan J. Villa
Ryan J. Villa